(12)

FILED
JUN 16 1944
CHARLES ELMORE CROPLEY
CLERK

In the
Supreme Court of the United States

TERM, 1944

No. 170

STATE OF IOWA,

Respondent,

vs.

GLENN CLARK and JAMES PONTRALO,

Petitioner.

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF

GORDON A. NICHOLSON,
Attorney for Petitioner.

FRANK L. BURBRIDGE,
CARL V. BURBRIDGE,
ROY E. HAVENS,
Of Counsel.

COCKLE PRINTING CO., LAW BRIEFS, OMAHA

SUBJECT INDEX

Page

PETITION FOR WRIT OF CERTIORARI:

Summary statement of the matter involved 2

Reasons relied on for allowance of the writ 3

Prayer for writ 10

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI:

I. Decision of the court below 3

II. Summary 8

Point 1. Decision of State Court in arbitrary conflict with Federal and former State decisions 4

Point 2. State Supreme Court ignored Iowa Statutes affording right to show cause why forfeiture should be set aside and judgment instanter denied 7

CONCLUSION 9

—o—

TABLE OF CASES AND STATUTES CITED

Page

184 P. 372, 7 A. L. R. 392, 67 Colo. 452 4

3 R. C. L. 55, 6 C. J. 946, 1053 4

37 N. W. 586 4

11 S. Ct. 140 U. S. 435, 35 L. Ed. 458 4

59 F. (2nd) p. 565, 50 F. (2nd) 16 (C. C. A. 8) 4

48 F. (2nd) 465, 48 F. (2nd) 574 4

42 F. (2nd) 399, 27 F. 633 4

Table of Cases and Statutes Cited—Continued

Page

59 Fed. 565 4

Turner vs. New York, 18 S. Ct. 38, U. S. 94, 42 L. Ed. 392 6

Saravac vs. Comptroller, 1900, 20 S. Court 642, 177 U. S. 318, 44 L. Ed. 786 6

Sections 13631, 13632 and 13636, Code of 1939 (Iowa) 7

State vs. Thomason, 266 Iowa 1057, 285 N. W. 636 7

6 Am. Jur., 101, Sec. 137 7

State vs. Arioso, 207 Iowa 1109, 224 N. W. 56 7

Annotation, 7 A. L. R. 392 7

Annotation, 8 A. L. R. 363 7

Annotation, 84 A. L. R. 444 7

Bruntlett vs. Carroll County, 193 Iowa 875, 188 N. W. 142 7

State vs. Sandy, 138 Iowa 580 7

3 R. C. L. 53, Sec. 64 8

6 Am. Jur. 103, Sec. 140 8

State vs. Thomason, 226 Iowa 1057, 285 N. W. 636 8

State vs. Arioso, 207 Iowa 1109, 224 N. W. 56 8

6 Am. Jur. 119, Sec. 185 8

6 Am. Jur. 120, Sec. 189 8

Swan vs. City of Indianola, 142 Iowa 731 8

Hart vs. Stence, 219 Iowa 55, 97 A. L. R. 535 8

Bennett vs. Ryan, 206 Iowa 1236 8

Article 14, Constitution of the United States 9

In the
Supreme Court of the United States

—o—

.....TERM, 1944

No.....

—o—

STATE OF IOWA,

Respondent,

vs.

GLENN CLARK and JAMES PONTRALO,

Petitioner.

—o—

PETITION FOR WRIT OF CERTIORARI AND BRIEF IN SUPPORT THEREOF

—o—

PETITION FOR WRIT OF CERTIORARI

MAY IT PLEASE THE COURT:

Your petitioner, James Pontralo, defendant and appellant in the Supreme Court of Iowa, respectfully shows to this Honorable Court:

A.

SUMMARY STATEMENT OF THE MATTER INVOLVED

Petitioner appealed from an order of the District Court of Pottawattamie County, Iowa from a cause in which bail bond in the sum of $2,500.00, interest and cost, was ordered forfeited against petitioner, Pontralo, because of his inability to produce, on a charge of larceny, Glenn Clark, principal in a criminal case in which the State of Iowa was prosecuting said Glenn Clark. Clark had been released on bail bond on September 23, 1942 to answer the charge of larceny of a motor vehicle, the bond being signed by him as principal and petitioner, James Pontralo, as surety. Thereafter on November 10, 1942, Glenn Clark appeared in Court and was arraigned on such charge, entered a plea of not guilty and was advised that the case would be assigned for trial as soon after November 21, 1942 as it could be reached. The case was reached for trial on December 1, 1942 but Clark was not present and did not appear because of the inability of petitioner, Pontralo, to produce him for the reason that he was confined in a Nebraska jail and thereafter transported to the State Penitentiary at Lincoln, Nebraska under a penitentiary sentence. The Nebraska authorities refused to permit him to attend the Iowa Court to stand trial on the charge for which petitioner had signed his bond although petitioner had tried by every possible means to produce him in Court. After the bond was declared forfeited, an appeal was taken to the Supreme Court of the State of Iowa on the ground, generally, that the Iowa Criminal case should have been continued until such time as petitioner could produce Clark at the time

he should be released by the Nebraska authorities when his sentence in Nebraska would be completed.

The Iowa Supreme Court denied the appeal and affirmed the judgment of the lower court of forfeiture of the bond against petitioner. (See opinion of the Court R. .....)

Jurisdiction of This Court

The jurisdictional statute upon which your petitioner relies to nivoke the jurisdiction of this court is Section 237 of the Judicial Code of the United States.

Your petitioner claims that his rights under the Federal Constitution, hereinafter quoted, and the decisions of this Court have been denied and such decisions nullified as hereinafter more specifically stated.

B.

Reasons Relied on for Allowance of the Writ

1. The Supreme Court of Iowa was in error in holding that petitioner was liable on a bond to produce Glenn Clark for the reason that it was physically impossible to obtain his presence because of the restraint imposed by the Nebraska authorities. Its decision and opinion plainly ignore the fact that the principal on a bond being incarcerated in a penitentiary of another state, the keeper thereof plainly refusing to surrender him, no responsibility rests upon the surety to do more than demand in every possible way the prisoner's production. He must indeed, of course, follow the case and secure the presence of such prisoner immediately upon his legal release from the institution in which he may be incarcerated.

2. The Supreme Court of Iowa is clearly in error in requiring a forfeiture because under such circumstances, unless by force or some species of kidnapping wherein the petitioner would himself have been guilty of the commission of a crime, it was totally impossible for him to produce Glenn Clark. That in so doing the Iowa Supreme Court ignored the decisions of this and other Federal Courts which in effect state that where it is impossible to secure a principal's presence by reason of a condition which may amount practically to an act of God, forfeiture is defeated. In other words, when it is physically impossible to obtain the prisoner as in this case, a forfeiture *should not be* entered against the surety.

184 P. 372, 7 A. L. R. 392, 67 Colo. 452.

3 R. C. L. 55, 6 C. J. 946, 1053.

37 N. W. 586.

11 S. Ct. 140 U. S. 435, 35 L. Ed. 458.

59 F. (2nd) p. 565, 50 F. (2nd) 16 (C. C. A. 8).

48 F. (2nd) 465, 48 F. (2nd) 574.

42 F. (2nd) 399, 27 F. 633.

59 Fed. 565.

3. That the error and the evil of the State Court in thus unreasonably and arbitrarily approving the decision of the lower court forfeiting the bond has patently deprived the petitioner of property without due process of law.

WHEREFORE your petitioner respectfully prays that a Writ of Certiorari be issued out of and under the seal of this Court directed to the Supreme Court of the State of Iowa, commanding that Court to certify and to send to

this Court for its review and determination on a day certain to be therein named, a full and complete transcript of the record and all proceedings in the case, numbered and entitled on its docket, No. 46344, State of Iowa, Appellee, vs. Glenn Clark and James Pontralo, Appellants, and that the judgment of the Supreme Court of Iowa may be reversed by this Honorable Court and it be ordered that petitioner be given time to the expiration of the Nebraska sentence of Clark to deliver him to trial before the District Court of Iowa and that your petitioner may have such other and further relief in the premises as to this Honorable Court may seem just, and your petitioner will ever pray.

JAMES PONTRALO,

By GORDON A. NICHOLSON,

Attorney for Petitioner.

FRANK L. BURBRIDGE,
CARL V. BURBRIDGE,
ROY E. HAVENS,

of Counsel.